

## **§ 1603.212**

within 5 days after service of the subpoena, petition the administrative law judge in writing to revoke or modify the subpoena. All petitions to revoke or modify shall be served upon the party at whose request the subpoena was issued. The requestor may file with the administrative law judge a response to the petition to revoke or modify within 5 days after service of the petition.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the administrative law judge may refer the matter to the Commission for enforcement in accordance with 29 CFR 1601.16(c).

### **§ 1603.212 Witness fees.**

Witnesses summoned under this part shall receive the same fees and mileage as witnesses in the courts of the United States. Those fees must be paid or offered to the witness by the party requesting the subpoena at the time the subpoena is served, or, if the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to pay or offer witness fees and mileage allowances in advance.

### **§ 1603.213 Interlocutory review.**

(a) Interlocutory review may not be sought except when the administrative law judge determines upon motion of a party or upon his or her own motion that:

(1) The ruling involves a controlling question of law or policy about which there is substantial ground for difference of opinion;

(2) An immediate ruling will materially advance the completion of the proceeding; or

(3) The denial of an immediate ruling will cause irreparable harm to the party or the public.

(b) Application for interlocutory review shall be filed within ten (10) days after notice of the administrative law judge's ruling. Any application for review shall:

(1) Designate the ruling or part thereof from which appeal is being taken; and

(2) Contain arguments or evidence that tend to establish one or more of the grounds for interlocutory review

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contained in paragraph (a) of this section.

(c) Any party opposing the application for interlocutory review shall file a response to the application within 10 days after service of the application. The applicant shall have no right to reply to a response unless the administrative law judge, within his or her discretion, orders that a reply be filed.

(d) The administrative law judge shall promptly certify in writing any ruling that qualifies for interlocutory review under paragraph (a) of this section.

(e) The filing of an application for interlocutory review and the grant of an application shall not stay proceedings before the administrative law judge unless the administrative law judge or the Commission so orders. The Commission shall not consider a motion for a stay unless the motion was first made to the administrative law judge.

### **§ 1603.214 Evidence.**

The administrative law judge shall accept relevant non-privileged evidence in accordance with the Federal Rules of Evidence (28 U.S.C. appendix), except the rules on hearsay will not be strictly applied.

### **§ 1603.215 Record of hearings.**

(a) All hearings shall be mechanically or stenographically reported. All evidence relied upon by the administrative law judge for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence shall be marked for identification, with a copy provided for all parties, if not previously provided, and incorporated into the record. Transcripts may be obtained by the parties and the public from the official reporter at rates fixed by the contract with the reporter.

(b) Corrections to the official transcript will be permitted upon motion, only when errors of substance are involved and upon approval of the administrative law judge. Motions for correction must be submitted within ten (10) days of the receipt of the transcript unless additional time is permitted by the administrative law judge.